

ST 03-0013-GIL 01/28/2003 PRODUCTS OF PHOTOPROCESSING

In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price unless the sale is made by a professional photographer, in which case tax is imposed on 10% of the entire selling price. See 86 Ill. Adm. Code 130.101. (This is a GIL).

January 28, 2003

Dear Xxxxx:

This letter is in response to your letter dated October 12, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I just started a small photography business and have questions about sales and use tax. I just received my Certificate of Registration and a ST-1 Sales and Use Tax Return form. I have called the help lines and received many different answers. I want to make sure that I complete all forms correctly. My business is a home-based sole proprietorship. **In my area the sales tax rate is 6.25%. Is this the tax percentage that I need to be collecting?**

The ST-19 Retailer's Tax Booklet contains a section on page 15 that refers to photoprocessors. I want to make sure that I am interpreting this section correctly as it applies to my business as a professional photographer. As I understand it, I am given two choices when collecting tax. I can either charge the customer tax on 100% of the photoprocessing portion of the bill as long as it is stated separately. My other option is to charge the customer tax on 10% of the entire bill if I do not state the photoprocessing portion of the bill separately. I plan to list picture package prices to customers and **not** itemize photoprocessing, materials, labor, etc. on their bill. **Is it correct then, that if I sell a \$100.00 package, I charge tax on \$10.00? If yes, do I list the other \$90.00 on line 9 of the ST .1 Work Sheet for line 2 as 'Service'?**

In September I photographed two students for their senior portraits. At that time, I had not received my Certificate of Registration, so I was charged tax on the film developing and processing. **Since I have already paid the tax on the photoprocessing, is this sale still considered a taxable receipt? If it is not a taxable receipt, do I need to list this sale on the ST-1 form?**

My first Sales and Use Tax Return form is dated July 1-September 30, 2002. If I collect half of a customer's money in the form of a down payment in September and the rest of the payment after September, how is this handled? **Do I tax the payments separately, or do I wait until I receive the entire payment and claim it on the next form?**

We are located near the Illinois / STATE border. I hope to have customers in STATE. For example, I will go to STATE to photograph weddings, dance studio students, or school dances (proms). **If I go to STATE to photograph on location, do I charge customers Illinois sales tax, STATE sales tax, or not charge any tax?**

My next few questions concern use tax. I purchased some camera equipment in STATE and was charged 5% sales tax. My total after the 5% sales tax was \$1,324.01. I paid a total of \$63.05 in STATE sales tax, so my cost before that was \$1,260.96. **I will not be selling this equipment. Do I have to pay Use Tax on this equipment?** If yes, would I only pay the difference between the 5% STATE Tax and the 6.25% Illinois Tax Rate? If this is the case, would I multiply \$1,260.96 by the difference of the tax rates, which is 1.25%, and owe \$15.09 in Use Tax?

This next question also deals with use tax. I purchased some equipment from a store in Chicago. I was charged 7% sales tax. The salesperson said that if I sent them a copy of my Certificate of Registration, then they would refund the money I paid in sales tax. **I will not be selling this equipment. Does the purchase of my equipment fall under the use tax rule? If yes, and I do receive the 7% sales tax refund, then will I need to pay the 6.25% use tax on the equipment?**

As part of my photography business I may sell items such as wedding albums. If I pay tax on the merchandise prior to selling it, do I have to collect any sales tax? If I **do not** pay tax on the merchandise, **can I include the cost of the merchandise in the total sale and charge tax on 10% of the entire bill?**

I also would like to know if I would be classified as a **General Merchandise Retail Sales** or **General merchandise Service Sales**? From what I have read and been told, I think I am General Merchandise Service Sales.

I would like to thank you for answering these questions for me. When you reply, could you please send me any additional information regarding sales and use tax that may apply to me? Again thank you for your time!

## **DEPARTMENT'S RESPONSE:**

Section 2-15 of the Retailers' Occupation Tax Act regarding photoprocessing provides:

Photoprocessing. For purposes of the tax imposed on photographs, negatives, and positives by this Act, 'photoprocessing' includes, but is not limited to, developing films, positives, negatives, and transparencies, and tinting, coloring, making, and enlarging prints. Photoprocessing does not include color separation, typesetting, and platemaking by photographic means in the graphic arts industry and does not include any procedure, process, or activity connected with the creation of the images on the film from which the negatives, positives, or photographs are derived. The charge for in-house photo

processing may not be less than the photoprocessor's cost price of materials. In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price unless the sale is made by a professional photographer, in which case tax is imposed on 10% of the entire selling price.' (emphasis added) 35 ILCS 120/2-15.

As you can see from the statutory language referenced above, a professional photographer that does not state a separate charge for the photoprocessing component of his services incurs tax on 10% of the entire selling price for that transaction. In your example, \$10 would be your taxable base for that transaction. You should report \$100 from this transaction on line 1 of Form ST-1. You should then report \$90 on Line 2 of that Form. The ST-1 Worksheet for Line 2 may be used by reporting the \$90 under part 9(c) Other (identify) and identifying those amounts as professional photography services.

For your general information, please see 86 Ill. Adm. Code 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions. Although Section 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Therefore, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. The tax rate is fixed by the location of the seller, not the delivery location. For example, if a customer comes to you at your home and you enter into an agreement with them at that location to provide professional photography services, the sale would be deemed to have occurred in your home and any local tax imposed in the jurisdiction where your home is located will be incurred. However, if you travel to another location and enter into an agreement to provide professional photography services while at that other location, the sale would be deemed to have occurred in that other location and any local tax, if any, imposed in that other jurisdiction will be incurred. If you make sales in other jurisdictions, you should contact the Department's Central Registration Division to obtain the proper forms (Form ST-2) for reporting sales in those other jurisdictions.

The sales you made before you received your certificate of registration in the mail should still be reported as taxable sales as described above. However, you may take a credit for the tax you paid in error to your suppliers.

The Department requires that reporting be done either on a gross receipts (cash) basis or on a gross sales (accrual) basis. See the enclosed copy of 86 Ill. Adm. Code 130.401. Retailers generally file sales tax returns on the cash (i.e. gross receipts) basis. Under the gross receipts basis, you would report gross receipts for the period in which you received them.

When you travel to STATE to take photographs, your Illinois sales tax liability is difficult to ascertain because sales in Illinois and delivery in Illinois determine whether Illinois tax is incurred. For example, if you accept a purchase order in Illinois for the photographs or you go to STATE to take the photographs, but the customer picks up the photographs in Illinois, these sales would be subject to Illinois sales tax liability. However, if you instead are required to ship the photographs to a customer in STATE, then the interstate commerce exemption would apply. See subsection (b) of 86 Ill. Adm. Code 130.605. To provide you with answers regarding specific situations, we would need more information about those specific situations.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See the enclosed copy of 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See the enclosed copy of 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

In your example regarding purchases of equipment you have made, you do incur a Use Tax liability at the rate of 6.25% on the equipment you purchased in STATE that is for use and not for resale. Please note that Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310(a)(3). Therefore, you are correct that you owe the difference between the 6.25% Illinois rate and the 5% STATE rate. Since the equipment you purchased is from a store in Chicago and is for use and not for resale, you cannot purchase it without incurring tax in this State. If you make a taxable purchase from a retailer in this State, you must pay the appropriate Use Tax liability to that retailer at the time of purchase. You cannot provide a Resale Certificate for the purchase of such equipment to avoid paying tax to your supplier. Please note that cameras, including digital cameras, that are used to generate photographic images do not qualify for either the manufacturing machinery and equipment exemption or the graphic arts equipment exemption. See for example subpart (b)(4)(A)(iii) of the enclosed copy of 86 Ill. Adm. Code 130.325.

If you sell merchandise, such as photograph albums, in addition to your professional photography services, you will incur Retailers' Occupation Tax liability on the full selling price of that merchandise. You may purchase that merchandise from your suppliers without incurring tax by providing them with a Resale Certificate. See the enclosed copy of 86 Ill. Adm. Code 130.1405. You then collect tax from your customers on your selling price of that merchandise. The 10% provision is only for products of photoprocessing.

Based on the limited description of your business provided in your letter, we believe that you would likely be classified as general merchandise service sales.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.